THE

# TRIAL

OF

## HELEN WATT,

Widow of the deceaſed ALEXANDER KEITH of Northfield,

AND

## WILLIAM KEITH,

Eldeſt lawful Son procreated betwixt the ſaid deceaſed ALEXANDER KEITH, and the ſaid HELEN WATT;

For the alledged Murder of the ſaid ALEXANDER KEITH of Northfield.

Before the Circuit Court of Juſticiary held at Aberdeen, on the 4th, 5th, and 6th days of September 1766, by the Right Honourable Lord KAIMS, one of the Lords Commiſſioners of Juſticiary.

LONDON:

M,DCC,LXVI.


BRITISH MUSEUM
17
83
SEP

# ADVERTISEMENT.

THE ſingular circumſtances of this caſe, the atrocious nature of the crime, the great diſtance of time ſince that crime is ſaid to have been committed, together with the doubtfulneſs and uncertainty of the evidence, have excited the curioſity of the Public, and have occaſioned the trial's being now publiſhed.

IN PERUSING this trial, a very material defect in the evidence muſt immediately occur. No proof has been brought ſufficient to ſatisfy us, that the late Mr Keith of Northfield died a violent death. The diſcoloured marks which were perceived upon his neck, after he had been ſome hours dead, muſt neceſſarily create in our minds ſome ſuſpicion, but we are by no means convinced that theſe appearances of the body, might not have been the conſequences of a natural death. So various, and ſo odd, are often the diſcoloured ſpots obſerved upon dead bodies, that no Phyſician of skill and obſervation will ever preſume to account for their cauſes. We perceive indeed, that one Phyſician, who was called as a witneſs, has, with very little reſerve, de-

clared his opinion, That ſuch marks as thoſe, which appeared on Mr Keith's body, could ſcarcely have been occaſioned by any natural diſeaſe. It muſt, however, appear extraordinary, that, in eſtabliſhing this capital and moſt eſſential part of the proof, the Gentlemen of the Jury ſhould either have confided ſo much in their own skill, or have truſted ſo intirely to the opinion of a ſingle Phyſician, a practitioner in a remote part of the country.

From conſidering this trial, it would appear to us, that the want of ſuch an eſtabliſhment as that of the Coroner's Inqueſt, is a very material defect in the Criminal law of Scotland. This very ancient inſtitution, originally a branch of the Feudal Syſtem, ſtill remains in England, and has, like many other parts of that amazing fabric, accidentally proved, in after and more refined times, of the greateſt public advantage and utility. It preſerves that form of procedure, ſo natural and regular, of enquiring, in the firſt place, if a crime has truly been committed, before proceeding to ſearch for, or puniſh the perſons who may have been guilty of that crime. It contributes equally to the public utility, by preventing ſecret and dangerous crimes from paſſing unpuniſhed, and by guarding innocence from ſuffering for a crime which truly had never been committed. (*a*).

An

(*a*) The neceſſity of having it firſt eſtabliſhed, that a crime has been committed, before proceeding to ſearch for the author of that crime, may be well illuſtrated by the following paſſage from

AN INCIDENT which occurred in the courſe of this trial, gave occaſion to a queſtion of curioſity and importance. After the Jury had been ſworn and charged

from Lord Hale's hiſtory of the pleas of the Crown, vol. 2d. p. 290.

" I would never convict any perſon for ſtealing the goods " *cujuſdam ignoti* merely becauſe he would not give an ac- " count how he came by them, unleſs there were due proof " made, that a felony was committed of theſe goods.

" I would never convict any perſon of murder or man- " ſlaughter, *unleſs the fact were proved to be done*, or at leaſt " the body found dead, for the ſake of two caſes, one mention- " ed in my Lord Coke's P. C. cap. 104. p. 232. a Warwick- " ſhire caſe. That caſe was thus: An Uncle who had the " bringing up of his Niece, to whom he was heir at law, correct- " ing her for ſome offence, ſhe was heard to ſay, '*Good Un-* " *cle do not kill me!*' After which time the child could not be " found; whereupon the Uncle was committed upon ſuſpicion " of murder, and admoniſhed by the Judges to find out the " child by next aſſizes; againſt which time he could not find " her, but brought another child as like her in perſon and " years as he could find, and apparelled her like the true child; " but upon examination ſhe was found not to be the true child. " Upon theſe preſumptions he was found guilty and executed; " but the truth was, the child being beaten ran away, and was " received by a ſtranger; and afterwards when ſhe came of " age to have her land, came and demanded it, and was direct- " ly proved to be the true child.

" Another that happened in my remembrance in Stafford- " ſhire, where A was long miſſing, and upon ſtrong preſump- " tions B was ſuppoſed to have murdered him, and to have " conſumed him to aſhes in an oven, that he ſhould not be " found; whereupon B was indicted of murder, and convict " and executed. And within one year after A returned, be- " ing indeed ſent beyond ſea againſt his will; and ſo, though " B juſtly deſerved death, yet he was really not guilty of the " offence for which he ſuffered."

charged with the Priſoners, and after ſeveral witneſſes had been examined, one of the Jurymen left the Court, and went out into the public ſtreet. It was immediately inſiſted on the part of the Priſoners, that this was ſuch a breach of the regular form of trial, as muſt neceſſarily ſtop all further procedure againſt them.

Upon this point, it appears to have been maintained by the Counſel for the Priſoners, that this incident not only ſhould prevent at that time, any farther proceeding in the trial; but ſhould likewiſe diſcharge the Priſoners from any future trial for that offence. The Priſoners afterwards thought it adviſeable to conſent to the trial's going on; and when they moved their plea in arreſt of judgment, to the effect of a total acquittal, it was overruled.

The Honourable Judge was perhaps of opinion, that as this objection was not ſtrenuouſly inſiſted upon by the priſoners, when the incident itſelf occurred, it could not be afterwards urged, notwithſtanding the reſervation made by their Counſel.

With regard to this queſtion, it may be remarked, that as the inſtitution of Juries is the moſt admirably calculated for the preſervation of liberty, and the adminiſtration of juſtice, ſo the greateſt care and anxiety have conſtantly been ſhewn by the Legiſlature, to guard againſt any abuſe or corruption in this inſtitution. For this purpoſe, the whole conduct of Juries, and the form of trial before them, have been moſt accurately defined;

and

and it has ever been held more ſafe to ſuffer guilt to paſs unpuniſhed, than to violate, even in the leaſt degree, any of thoſe ſtrict forms, which are the ſafe-guards and ſecurity of innocence. There is no ſafety, if we once depart in the ſmalleſt degree from a rigid adherence to the general rule; for one deviation imperceptibly leads to another, till at length the general rule itſelf is forgot. Caſes may no doubt be put, where, in order to puniſh guilt, public juſtice may ſeem to require a little deviation from the ſtrictneſs of form: "But ſays a Learned and Venerable Judge *, "Theſe are particular and "ſingle inconveniencies; and the policy of the "law of England, and indeed the true principles "of all Government, will rather ſuffer many pri-"vate inconveniencies, than introduce one pu-"blic miſchief."

That a Jury in a capital caſe, after having heard the evidence taken, muſt immediately be incloſed by themſelves, and muſt have no communication with any perſon whatever, till they ſhall have agreed in their verdict, has been firmly eſtabliſhed by long and uniform practice. Any ſingle Juryman's with-drawing from the room in which they have been incloſed, or having communication with any perſons without, before they had agreed in their verdict, would certainly vitiate the whole procedure, and render their verdict abſolutely void. To produce precedents or authorities to prove

* Foſter's Crown Law.

prove a matter ſo univerſally acknowledged, would be equally improper and unneceſſary.

But farther, even before being incloſed, it has been held, that, in capital caſes, from the time that a Jury have been ſworn and charged with a Priſoner, they cannot be diſcharged till they have given a verdict. From that time till they are incloſed, they muſt be conſtantly kept under the eye of the Judge, and no poſſible opportunity muſt be given them, of receiving any information or impreſſion, but what may ariſe from the evidence taken openly before the Judge, the Guardian of the juſtice, and regularity of the procedure. A Jury-man's leaving the Court, and holding any communication with perſons who might poſſibly influence or corrupt him, has been ever judged ſuch an irregularity as muſt deſtroy and render void every part of the procedure.

In the caſe of Lord DELAMERE, who was tried for high Treaſon in 1685, not in Parliament, but by a commiſſion to the Lord High Steward, it happened, that after the evidence had been taken, the Priſoner finding himſelf much fatigued and unable to go through his defence, intreated the Court to adjourn till the next day. The Lord High Steward informed the Priſoner, That it was an eſtabliſhed point in the law of England, that, in a capital caſe, after evidence given, a Jury could not be adjourned, but muſt proceed in the inquiry till they had agreed in their verdict: That, however, there was ſome doubt if they might not adjourn in that caſe, where the Triers were Peers, who ſurely might

might have adjourned, had the trial been in Parliament.

The Judges of England were called and conſulted, and the Lord Chief Juſtice returned their anſwer in the following words: "My Lord, "In the firſt place, where the trial is by a Jury, "there the Law is clear; the Jury once charged "can never be diſcharged till they have given "their verdict. This is clear, and the reaſon of "that is, for fear of corruption and tampering "with the Jury: An Officer is ſworn to keep the "Jury together, without permitting them to ſepa-"rate, or any one to converſe with them; for no "man knows what may happen. For though the "law requires honeſt men ſhould be returned up-"on Juries, (and without a known objection they "are preſumed to be *probi et legales homines*,) "yet they are weak men, and perhaps may be "wrought upon by undue application." * His Lordſhip, in the next place, proceeds to the conſideration of the ſecond point which had been propoſed, but as that does not apply to the preſent queſtion, it is unneceſſary to quote it.

In Scotland, ſo lately as the year 1763, it was ſolemnly determined by all the Judges in the caſe of Janet Ronald, that after a Jury is charged with a priſoner, they cannot be adjourned till they ſhall have returned a verdict. She was tried for the crime of giving poiſon to her ſiſter. After the proof was concluded, and while his Majeſty's Advocate was addreſſing the Jury, one of the Jurymen was ſeized with a ſudden illneſs, which ren-



* State Trials, vol. 3. p. 378.

dered him incapable of continuing in Court. The Court was adjourned till next morning, when the Jury-man being recovered, and the whole Jury again re-aſſembled, they were incloſed, and returned a verdict finding the priſoner guilty. It was moved in arreſt of judgment, that the Jury having been adjourned and the Jury-men diſperſed after evidence had been given, before they had returned a verdict; and by that means an opportunity having been given to ſollicit and tamper with them in private, the verdict was void and null, and no ſentence could be pronounced upon it. After the fulleſt deliberation, the Judges found, that, the adjournment vitiated the whole procedure; that no ſentence could be pronounced upon that verdict, and accordingly diſmiſſed the priſoner from the bar.

So ſacred have theſe forms been held, that, in England, it was lately much doubted if, in a capital caſe, a jury ſworn and charged with a priſoner might be diſcharged, even with the conſent of the priſoner, and before any evidence had been taken.

In the caſe of the Kinlochs, tried in the year 1746, at St Margaret's-hill, for High Treaſon, this particular queſtion was debated, and tho' the plea of the priſoners was over-ruled, the Judges were not unanimous in that judgment. It will, however, appear evidently from the opinions delivered by the Judges in that caſe, That the diſcharging a jury *after evidence given*, would moſt aſſuredly have had the effect to free the priſoner from any future trial for that offence.

It

It will thus appear with what care and anxiety the conduct of juries has been regulated, in order to preſerve that excellent inſtitution from any degree of corruption or abuſe. From the moment they are ſworn and charged with the priſoner, till they ſhall have diſcharged their duty, by returning a verdict, every, the leaſt opportunity of undue ſollicitation or influence, has been carefully guarded againſt. Before incloſing, they are intruſted to the care of the Judge, and, after they are incloſed, they are ſtill more ſtrictly ſecluded from every poſſibility of acceſs. Jury-men, though honeſt men, are often weak men, and may eaſily be miſled by artful inſinuations, and the only certain means of ſecuring againſt either their diſhoneſty or their weakneſs, and of preſerving the purity of this inſtitution, is to guard againſt every poſſible opportunity of influence.

AFTER THE Jury in this trial had incloſed, they continued for five hours deliberating what verdict they ſhould return. We are informed that they were exceedingly divided in their ſentiments with regard to the evidence, and while ſome inſiſted that their verdict ſhould find the priſoners either *guilty* or *not guilty*, it was propoſed by others, that they ſhould expreſs themſelves in a different manner, and that they ſhould find the libel either *proved* or *not proved*. It would appear to have been the ſentiments of ſome of them, that although they were by no means ſatisfied of the innocence of the priſoners, yet they had no full or convincing evidence of their guilt; and that they could therefore beſt expreſs their ſentiments by finding

finding the libel *not proved*. A verdict was returned, finding both the priſoners guilty; but even then, ſix of the Jury-men voted *not guilty*.

The point which ſeems to have divided the jury in this caſe, reſolves into a general queſtion, with regard to the nature of evidence, very nice and difficult, but at the ſame time, of the greateſt importance.

It appears from the records of the Criminal court in Scotland, that it is not many years ſince juries in that country came to exerciſe, or even to know, the full extent of their power. Before the Union of Scotland with England, the form of trial by jury took place there; but their juries neither knew nor exerted their proper powers. Since the Union, the people have acquired liberty and independence, the Commons have become a conſiderable order in the ſtate, and, together with many other advantages reſulting from that happy event, juries have at length come to aſſert their own privileges, and have now rendered that inſtitution, no leſs uſeful and reſpectable in the one kingdom, than it has long been in the other. This important alteration, however, was not ſuddenly introduced, and it is only by ſlow and gradual advances, that the conſtitution of juries has now finally attained its preſent degree of perfection.

To explain this alteration, a matter both of curioſity and of uſe, it will be obſerved, that every indictment contains, in the firſt place, a general deſcription of the fact, concluding that fact to be a certain crime known and denominated by the law; and, in the next place, contains a detail

tail of thoſe circumſtances by which the truth of the fact, that is the guilt of the perſon accuſed, is to be made evident. To determine the firſt, as for example, whether the fact alledged is murder or only man-ſlaughter, is the proper buſineſs of the Judge. But to determine the ſecond, is as unqueſtionably the province of the Jury alone. However, till within theſe 40 years, it was the practice for the Judges in Scotland to determine both. They not only declared whether the fact deſcribed was properly the crime alledged: but they alſo determined whether the circumſtances mentioned were *relevant* *, if proved, to conclude the guilt of the perſon accuſed. Nothing remained for the Jury, but to point out which of the catalogue of circumſtances had been proved, nor did they ever venture to draw any inference from theſe facts, with regard to the guilt or inocence of the priſoner. Thus, though the form of juries was eſtabliſhed, their power truly remained with the Judge.

The firſt remarkable inſtance, in which we find the juries of Scotland recover their independence, and exert their proper rights, is the celebrated trial of Carnegie of Finhaven, in the year 1728. In this Trial they took even a bolder ſtep, and ventured to correct the Judges in their own department. They found the priſoner *not guilty*, and, by that means, in effect determined, that only to be man-ſlaughter, which the Judges had declared to be murder. Since that time, the Judges have confined themſelves to their own province; and have left

* That is *ſufficient*.

left it to the jury alone, to conclude from the proof, the guilt or innocence of the priſoner. Thus, without the aid of any ſtatute, merely from the manners and ſentiments of men becoming more free and independent, this important alteration was introduced, and the rights and power of juries came to be more fully underſtood, and properly exerted.

One ſtep, however, ſtill remains before this admirable inſtitution can attain its full perfection. Men muſt have frequent opportunities, and muſt be often accuſtomed to weigh and to conſider evidence before they can judge of it with accuracy, or even with perfect candour. This circumſtance of itſelf, which every man muſt feel, ſhould teach jury-men to proceed with the utmoſt caution, eſpecially in judging from preſumptive evidence. They ſhould be aware of thoſe weakneſſes of human nature, which are apt to blind and miſlead them in judging of circumſtances. They ſhould reflect, that indignation at the crime itſelf, is apt to make us almoſt at once believe the guilt of the priſoner, before we have heard any evidence, and ſwells and magnifies in our eyes every circumſtance againſt him. They ſhould reflect that this weakneſs is the more dangerous, as it will chiefly affect the moſt virtuous and honeſt minds. They ſhould conſider alſo, that our indignation is the more roufed, aud the influence of it therefore the more dangerous, from the minute and affecting deſcription of the ſhocking crime which the indictment uſually contains. They ſhould obſerve that ſlight circumſtances are often apt to make a very ſtrong impreſſion upon

our

our minds; and that from ſuch impreſſion, every new particular appears in our prejudiced eyes the deepeſt mark of guilt. They ſhould thus be well aware of the many errors and prejudices to which our nature is expoſed, and they ſhould never forget, that altho' preſumptive evidence may prove of all others the moſt convincing to our minds, yet, together with the exiſtence of all theſe circumſtances, from which it ariſes, there is ſtill, at leaſt, a poſſibility of innocence. Accurately to define when preſumptive evidence ſhould be held compleat and *legal*, is perhaps impoſſible, and it would be improper here to attempt it. It only appears clear that we ought to place the ſtandard as high as poſſible, and that mere BELIEF ſhould never be held ſufficient. We have ſhown what weakneſſes may often unjuſtly produce our belief of guilt; and that it is only by a very cool and deliberate examination of the foundation of our BELIEF, that we come to diveſt ourſelves of theſe prejudices, and correct our firſt haſty judgment. We ſhould cautiouſly weigh the reaſons of our belief, and ſhould require ſuch a chain of circumſtances, as not only to our own minds, but to all impartial men, would appear inexplicable on the ſuppoſition of innocence. If belief alone ſhould be held ſufficient, without our being able to point out the grounds of our conviction, innocence has not only to dread the effects of weakneſs and prejudice, but if dangerous and arbitrary times ſhould ever ariſe, may likewiſe be expoſed to the fatal effects of corruption itſelf. For under the ſpecious pretext of BELIEF, every man may ſhelter himſelf, and find a cover for his weakneſs, his prejudice, and even his corruption.

This

This is the danger to which the juries of Scotland are ſtill expoſed. They ſhould be cautious while they have gained a great power, not to ſuffer themſelves to abuſe it. While they have recovered their rights and privileges, from thoſe who had long uſurped them, they ſhould now be careful to guard againſt their own weakneſs and corruption, and to preſerve the purity of an inſtitution, the moſt admirably calculated for the ſecurity of liberty.

THE TRAIN of thinking, into which we have been brought, by reflecting upon the power of juries, and the conduct fit to be obſerved by them, naturally leads us to conſider the propriety of a practice, which, according to our information, has only of late been introduced in the courſe of trials, for capital offences in Scotland.

The law of that country ſeems to have been peculiarly attentive to the protection of innocence; and many regulations have been introduced in favour of thoſe who have the misfortune to be proſecuted for criminal offences. The priſoners are in all caſes allowed the aſſiſtance of counſel; and when poverty prevents them from applying for ſuch aſſiſtance in the uſual manner, the Judges never fail to recommend to ſome of the Gentlemen at the Bar to appear in their defence.

We perceive, likewiſe, that it is appointed by a particular ſtatute*, That in all criminal purſuits, the priſoner, or his counſel, ſhall be the laſt ſpeaker, except in caſes of Treaſon and Rebellion againſt the King. This ſtatute ſeems to be founded upon prin-

* 1672, cap. 16.

principles of humanity, and to have been calculated to give the unfortunate priſoners the benefit of any favourable impreſſions, which might be created in the minds of the jury-men, by the obſervations made upon the proof by their counſel. How far it may imply any reſtraint upon the Judges from delivering their ſentiments to the jury, upon the proof taken before them, we ſhall not pretend to determine. However, that the legiſlature viewed the matter in this light, ſeems preſumable from the late ſtatute, 21ſt Geo. II. cap. 19. Sect. 18; by which, in all caſes where the teſtimony of the witneſſes ſhall not be reduced into writing, the Judges are appointed to ſum up the evidence to the jury immediately before they are incloſed. Of late, however, according to our information, in all caſes, not only in the trials of leſſer offences, where the evidence is only given *viva voce*, but alſo in the trials of capital crimes, in which the teſtimony of the witneſſes is reduced into writing, ſome of the Judges in Scotland have thought proper to addreſs the jury upon the import of the evidence, immediately before their incloſing.

How far a practice of this kind may be either proper or expedient, is a queſtion curious in its nature, and important in its conſequences.

In arguing this point, it may on the one hand be obſerved, that a Judge muſt be ever ſuppoſed a perſon free from partiality or prejudice, who watches over the juſtice and regularity of the trial. He condemns the guilty to their merited puniſhment, but he ſcreens the innocent from

the oppreſſion to which they may be expoſed To contend, therefore, that the mouth of the impartial judge ought to be ſhut the moment the proof is concluded, and that he ſhould not have it in his power to correct the miſtakes of the counſel, either on the one ſide or on the other, is ſurely unjuſt, and perhaps even abſurd.

On the other hand, it may be urged, that it is altogether unneceſſary for the ſake of public juſtice, that the judges ſhould deliver their ſentiments upon the import of a proof, which, by being reduced into writing, the jury have an opportunity of conſidering with the moſt minute attention. That the Judge's delivering any opinion on the import of the evidence, is in effect an encroachment upon the province of the jury. That it is from a jealouſy and ſuſpicion of Judges, that we value, the trial by jury, as ſo very excellent. That if from that ſuſpicion of Judges, it has been thought neceſſary to entruſt to juries the determination of Criminal cauſes, we muſt ſurely, likewiſe, prevent the Judge from influencing the jury. That, however, the rank and character of Judges muſt give their opinions an unſurmountable influence over the minds of jury-men, uſually country-gentlemen or tradesmen, who cannot be ſuppoſed to think themſelves equally capable to judge of the nature of evidence. It may be further ſaid, that as there is in our minds a natural bias againſt the priſoner, and a tendency to believe him guilty, even before having heard any evidence againſt him, ſo the legiſlature has wiſely appointed the counſel for the priſoner to be the laſt ſpeaker,

in

in order to counter-act the unhappy prejudices againſt him, now rendered doubly ſtrong by the pleading of the Proſecutor. That, however, the Judge's delivering his opinion, when againſt the priſoner, muſt, on all occaſions, certainly have the effect to remove any favourable impreſſion which may have been raiſed by the obſervation, of the priſoner or his counſel; and, that the neceſſary conſequence of this practice muſt be, that priſoners may, in many caſes, be nominally tried by a jury, while in fact it is the Judge alone, by whom their fate is determined. That the virtue of the Judge can never be any excuſe for a practice in itſelf improper. That altho' the preſent days are happy, and altho' no couuntry perhaps ever poſſeſſed Judges of more pure and unſpotted virtue than the Judges of Scotland are now eſteemed, yet they ſhould be careful not to eſtabliſh a dangerous precedent. They ought not to forget that other times may come, and other Judges may ariſe, who, under the ſanction of their reſpectable names, may employ this practice to deſtroy the freedom of juries, and ſtrengthen the hands of arbitrary power.

Such are the arguments by which theſe different opinions may be ſupported; and without hazarding any opinion of our own, we ſhall leave every reader to determine for himſelf.

WE HAVE thus ventured to offer a few reflexions upon ſome points of importance, with regard to the method of trial for criminal offences. They have chiefly reſpected the order and form of procedure

cedure in ſuch Trials. We may perhaps be thought to entertain ſentiments too favourable to a ſtrict and rigorous obſervation of legal forms. Let thoſe, however, who cenſure us, reflect that all theſe forms and ſolemnities are neceſſary for the protection of liberty. Order and form in judicial procedure, ſuit not with arbitrary governments, and are only to be found eſtabliſhed in FREE STATES, where the EVENT of the Trial is leſs anxiouſly regarded, than the FORM by which that end is attained. Let us reflect that the guilt, which, from our ſtrict attention to theſe forms, ſometimes eſcapes puniſhment, is the price which we pay for the perpetual ſecurity of innocence.

*Curia*

# CONTENTS.



## Prosecutor's Evidence.



George

## Evidence for the Priſoners.

*Curia itineris juſticiarii, S. D. N. Regis, tenta in prætorio burgi de Aberdeen, quarto die Septembris, milleſimo ſeptingenteſimo ſexageſimo ſexto, per Honorabilem Virum Henricum Home de Kaims, unum ex Commiſſionariis Juſticiariæ, S. D. N. Regis.*

CURIA LEGITIME AFFIRMATA.

*Intran.* HELEN WATT, Widow of the deceaſed *Alexander Keith* of *Northfield*,

AND

WILLIAM KEITH eldeſt lawful ſon procreated betwixt the ſaid deceaſed *Alexander Keith*, and the ſaid *Helen Watt*, PANNELS,

INDICTED and ACCUSED at the inſtance of James Montgomery Eſq; his Majeſty's ADVOCATE, for his Majeſty's intereſt, for the crime of murder committed by them upon the perſon of the ſaid deceaſt Alexander Keith, in manner mentioned in the Criminal Letters raiſed thereanent, bearing, THAT WHEREAS by the laws of God, the laws of this, and every other well governed realm, MURDER, or the willfully bereaving any perſon of life, eſpecially when ſuch murder is committed upon a perſon to whom reverence and affection are due by the moſt ſacred ties, is a crime of the blackeſt and moſt atrocious nature, and ſeverely puniſhable: YET TRUE IT IS, and of verity, that the ſaid Helen Watt, and the ſaid William Keith ſhaking off all fear of God, and regard to the laws, have preſumed to commit, and are guilty actors, art and part, of the ſaid heinous crime of murder, aggravated as aforeſaid:

IN SO FAR AS, the ſaid Helen Watt having been eſpouſed many years ago, by the ſaid deceaſed Alexander Keith of Northfield, a perſon conſiderably above her rank, for his ſecond wife; and having brought forth ſeveral children to him, whereof the ſaid William Keith is one; the ſaid deceaſed Alexander Keith did execute a teſtament, ſettling certain proviſions upon his ſecond wife and her children: That after this the ſaid Helen Watt and the ſaid William Keith became impatient for the death of the ſaid deceaſed Alexander Keith; and the ſaid Helen Watt was heard to expreſs wiſhes to that purpoſe, during an illneſs under which the ſaid deceaſed Alexander Keith laboured for ſome time; but the ſaid Alexander Keith not being likely to die of that illneſs, the ſaid Helen Watt his ſpouſe, and the ſaid William Keith his ſon, did treacherouſly and wickedly conſpire to murder the ſaid deceaſed Alexander Keith; and, in purſuance of this their wicked intention, upon the twenty-ſecond day of November, in the year of our Lord One thouſand ſeven hundred and fifty-ſix, or upon one or other of the days or nights of that month, or of the month of October immediately preceeding, or of December immediately following, the ſaid deceaſed Alexander Keith, who was then in the ſame ſtate of health he had been in for ſome time, having ſupped in his bed-chamber at his houſe of Northfield, in the ſhire of Banff, with the ſaid Helen Watt and the ſaid William Keith, and ſome more of the family; and after ſupper the other perſons having gone out of the room, and left the ſaid Helen Watt and the ſaid William

Keith

Keith with the ſaid deceaſed Alexander Keith, and two young children who were a-ſleep in a bed, they the ſaid Helen Watt and William Keith, or one or other of them, did wickedly murder the ſaid Alexander Keith, by ſtrangling him in his bed, either with their hands, or with ſome cord, or rope or napkin, or in ſome other violent manner: AND that the ſaid deceaſed Alexander Keith had been ſo ſtrangled, was evident from the marks of violence that appeared upon the body, a blue ſpot upon the breaſt, and a blue or diſcoloured mark quite round the neck, which muſt have been occaſioned by ſtrangulation, and which appearance could not have proceeded from the effects of any natural diſeaſe, if the ſaid deceaſed Alexander Keith had died without violence: And theſe marks of violence being diſcovered upon the body, the night the deceaſed died, AND ALSO being diſcovered by ſundry perſons next day, who enquired what the cauſe of theſe marks could be; the ſaid Helen Watt was anxious to conceal them, and pretended to account for theſe marks, by ſaying that they had proceeded from laying on a bliſtering plaiſter, or dreſſing of a bliſtering plaiſter with garters upon the ſaid deceaſed Alexander Keith's back or neck the night he died, altho' there had been no ſuch plaiſter or dreſſings tied on with garters upon the deceaſed that evening: AND the ſaid Helen Watt, conſcious of her guilt in the premiſes, and perceiving that the appearance of the dead body created ſuſpicion in all who ſaw it, did, in order to prevent further diſcovery, haſten the funeral of her ſaid deceaſed husband, in a moſt indecent manner:

AND

AND the ſaid Helen Watt and the ſaid William Keith, having been apprehended upon a warrant from Alexander Dirom Sheriff-ſubſtitute of Banff-ſhire, and committed to the priſon of Banff, as guilty of the murder of the ſaid deceaſed Alexander Keith, and examined in preſence of the ſaid Sheriff-ſubſtitute, upon the eighth day of July laſt, in the year One thouſand ſeven hundred and ſixty-ſix, they did each of them emit a declaration, which is ſubſcribed by them reſpectively, and by the ſaid Sheriff-ſubſtitute; which declarations are to be uſed in evidence againſt them upon their trial; and for that purpoſe ſhall be lodged in the hands of the clerk of the Circuit-court of Juſticiary, before which they are to be tried, that they may have acceſs to ſee the ſame: AT LEAST, time and place aforeſaid, the ſaid Alexander Keith was murdered, and the ſaid Helen Watt and William Keith, both, or each of them, or one or other of them, are guilty actors, or art and part of the foreſaid crime. ALL WHICH, or part thereof, or that the ſaid Helen Watt and William Keith, were guilty art and part therein, being found proven by the verdict of an aſſize, in preſence of our Lords Juſtice-general, Juſtice-clerk, and Commiſſioners of Juſticiary, in a Circuit-court of Juſticiary, to be held by them, or any one or more of their number, within the burgh of Aberdeen, upon the fourth day of September next to come, the ſaid Helen Watt and William Keith ought to be puniſhed with the pains of law, to deter others from committing the like crimes in all time to come.

The

The LIBEL being read over to the Pannels in open Court, they ſeverally denied the ſame.

*Procurators for the Proſecutor.*

Mr Coſmo Gordon, advocate-depute.
Mr John Douglas, advocate.

*Procurators in defence.*

Mr Alexander Wight, advocate.
Mr Alexander Elphinſton, advocate.
Mr Robert Cullen, advocate.

WIGHT, ELPHINSTON and CULLEN, for the Priſoners, repreſented, *

THAT they did not propoſe to offer any objections to the form of the Libel. That the priſoners are directly charged with having been guilty of murder; and that therefore the relevancy of the Indictment could not be diſputed.

That it appeared from the Indictment, that the Proſecutor does not pretend to bring againſt the priſoners any direct proof of this alledged murder; but means by a train of circumſtances to infer their guilt.

That this Indictment, containing all theſe circumſtances, connected with much art, and calculated to create a belief of the priſoners guilt, was now in the hands

* Theſe Defences for the Priſoners are a little different from the Record of the Court, and are here given more fully, as taken down by a perſon preſent at the Trial.

hands of the Jury, in order to direct them in attending to the evidence to be adduced by the Proſecutor.

That therefore, it had become neceſſary for the priſoners, in juſtice to themſelves, to ſtate the facts which had given riſe to this proſecution, as they truly happened, and as it was expected they would appear from the evidence to be brought. That this, they hoped, would remove the impreſſion created againſt them by the frame of the Indictment, and would prepare the Gentlemen of the Jury to attend equally to thoſe circumſtances which were to be proved in defence.

The late Alexander Keith of Northfield, was born about the year 1692. About twenty years before his death, he married Helen Watt oneof the priſoners, who bore to him a great number of children, and with whom he lived always very happily. He had early in life contracted a habit of exceſſive drinking, which gradually impaired his health, and being perſiſted in for a long courſe of years, at length ruined a conſtitution naturally healthy and ſtrong. The natural vigour of his conſtitution long ſtruggled againſt his irregular exceſſes, but was at length over-powered. Phyſicians were called, but they ſoon perceived that it was not within the power of their Art to reſtore his health, or even to prolong his life; and they informed his wife and his family, that his death was near at hand.

Senſible likewiſe himſelf of his approaching death, he reſolved to ſecure ſome proviſion for his wife, and for his younger children after his death; and for

that

that purpoſe, a very ſhort time before he died, he executed a will, ſettling upon them certain ſmall ſums of money, by no means beyond what his eſtate could very eaſily bear. He was the more ſtrongly induced to make this ſettlement, as he could truſt little to the generoſity of his eldeſt ſon, who had been exceedingly diſſatisfied with the ſecond marriage, and whoſe ungenerous, unforgiving temper had never relented towards his aged father, even in the laſt hours of his life. The old man did not many days ſurvive this ſettlement. He died of that diſorder, which had been long conſuming him, on the 22d of November 1756, in the 64th year of his age.

After no leſs than ten years have elapſed ſince his death, it is now alledged, that he did not die a natural death, but was murdered; and the priſoners are accuſed of having been the murderers.

In conſidering the evidence, it is hoped the Gentlemen of the Jury will obſerve, That, in order to ſupport the accuſation, there are two ſeparate facts, of each of which it is neceſſary there ſhould be clear and diſtinct evidence. In the *firſt* place, that a murder was committed; and in the *next* place, that the priſoners have been guilty of that murder. That it was the natural and proper form of proceeding in all criminal trials, firſt to have it certainly known and eſtabliſhed, that a crime had been committed, before proceeding to ſearch for the author of that crime. That therefore, the firſt point for the Jury to conſider in this caſe, is, Whether it ſhall clearly be proved that Keith of Northfield died a violent death?

It

It appears from the indictment, that the circumſtances by which the Proſecutor means chiefly to eſtabliſh this fact, are certain ſpots and marks, which are ſaid to have been perceived on the body of Northfield, ſome hours after his death.

The Gentlemen of the Jury will however conſider, that the appearances of dead bodies are often ſo various and extraordinary, that Phyſicians of the greateſt abilities, and moſt extenſive experience, have declared themſelves unable to account for their cauſes; or to determine, with any degree of certainty, whether they proceed from a natural, or from a violent death:

Beſides the general uncertainty of ſuch appearances, there is another circumſtance in the preſent caſe, which ſhould make us ſtill more cautious to infer from ſuch diſcoloured marks, that Northfield's death had been a violent one. It appears from the indictment, that the dead body was not viſited by Phyſicians, Surgeons, or any perſons of skill; but that theſe appearances of the body are now to be deſcribed by ignorant, inaccurate country people, by whom alone they are ſaid to have been perceived.

It appears further, that theſe witneſſes are likewiſe to deſcribe theſe appearances at the diſtance of ten years from the time at which they had inaccurately obſerved them. Phyſicians, who cannot pretend to determine the cauſes of ſuch appearances, when they themſelves have examined them, would ſurely think themſelves much leſs able to account for them, when only deſcribed by ignorant and unskilful obſervers. The Gentlemen of the Jury, therefore, ought ſurely to be very cautious in determining

determining positively or rashly with regard to the causes of marks, for which persons, the most skilled in observing the various appearances of the human body, cannot pretend to account.

They farther will be particularly careful not to confound together the proofs of these two distinct and separate facts, of the murder's having been committed, and of the prisoners having been the murderers.

They will reflect on the dangerous consequence of admitting circumstances tending to fix a crime on particular persons, to supply the defective evidence of that crime's having itself existed. Circumstances of conduct, in themselves the most innocent, may, upon the supposition of a crime, assume a very suspicious appearance, which arises entirely from innocence that had rendered the conduct careless and unguarded. From circumstances therefore suspicious, only, upon the supposition of a crime's having been committed, to reason backwards, and conclude from these, that the crime truly was committed, is contrary to all just and fair reasoning, and surely inconsistent with that regular form of procedure which has been established for the protection and security of innocence.

If however the Jury shall be satisfied that a murder has been committed, they must then proceed to examine if the prisoners have been the authors of that shocking crime.

In attending to the evidence on this point, it is hoped the Gentlemen of the Jury will consider the great distance of time since those facts and circum-

ſtances paſſed, which are the ſubject of the preſent inveſtigation. Altho' the detecting crimes, which have long lain concealed from the eyes of men, is of the greateſt advantage to ſociety, yet we muſt alſo reflect, that, by that very diſtance of time, innocence may be often deprived of the neceſſary means of defence.

In the preſent caſe, the unfortunate priſoners ſuffer conſiderably by this very circumſtance. Within theſe few years paſt ſeveral witneſſes have died, who would have been of the moſt material conſequence in their exculpation. In particular, Anne Keith, the ſiſter of the late Northfield, and who, at the time of his death, lived in his family, died only a few years ago. The loſs of this witneſs is the more particularly to be regretted, as ſhe was the only perſon, beſides the two priſoners, who was conſtantly near the bed-ſide of the deceaſed; and would have confirmed the declarations of the priſoners, in pointing out the innocent and accidental cauſe of theſe diſcoloured appearances on the dead body, which are the frail and the only foundation of this proſecution.

It is hoped the Gentlemen of the Jury will not be inattentive to theſe diſadvantages, under which, from the long delay of this proſecution, the priſoners muſt neceſſarily labour in making their defence. We hope they will not fail to obſerve, that the preſent Keith of Northfield neglected to exhibit any information to the public proſecutor, while witneſſes were alive, who had the beſt acceſs to know the true ſtate of this matter, and has brought it now after their death, when, at the ſame time, he cannot alledge that any new evidence has preſented itſelf.

Although

Although, from this delay, it has become impoſſible for the priſoners to confirm their declarations in every particular, yet they truſt, that they ſhall be in no circumſtance contradicted. When it ſhall be conſidered, that theſe declarations were made by two perſons ſuddenly ſeized, and accuſed of murder; and, while under the confuſion natural upon ſuch an occaſion, examined ſeparately concerning facts and circumſtances which happened ten years ago, we ſhould not be in any degree ſurpriſed, to meet with ſome inconſiſtencies in their accounts. But when, notwithſtanding all theſe diſadvantageous circumſtances, we perceive that their declarations are uniform throughout, and conſiſtent with each other, Can we avoid trnſting them? Is this ſimplicity like the confuſion of conſcious guilt? Muſt we not at once cry out, This can be the language of truth and innocence alone?

In judging of this caſe, it is particularly to be conſidered, that, in order to render this alledged murder in any degree probable, ſome powerful motives muſt be pointed out, which could prompt a wife and a ſon to conſpire againſt the life of a huſband and a father. But the motives alledged in the preſent caſe are moſt abſurd and incredible: And it is moſt improbable in itſelf, that ſuch ſlender motives of intereſt, as occurred here, ſhould operate ſo ſtrongly upon their minds.

Even, if their hearts were ſo wicked as to be ſo ſtrongly influenced by ſuch motives, the ſtory is ſtill improbable, becauſe of Northfield's age, and declining ſituation of health. Can we believe, that when they foreſaw his death to be ſo faſt approaching, they would thus wantonly imbrue their hands

hands in the blood of a huſband and a father, merely to attain a few days, perhaps only a few hours ſooner, the poſſeſſion of that pittance which he had provided for them? It was, on the contrary, much their intereſt that he ſhould live: For, while he lived and enjoyed the full poſſeſſion of his eſtate, the ſituation of their circumſtances was better than it could be when they ſhould be reduced to live upon the inconſiderable proviſion which his will had ſecured to them.

They could not poſſibly be prompted to commit ſuch a crime from any dread of his afterwards altering that ſettlement. The ſettlement was reaſonable. The proviſions were moderate, and had not been extorted from him by any ſollicitations. Unſollicited and unasked, he of himſelf, from the juſteſt and wiſeſt conſiderations, thought proper to execute this his laſt will. But further, the priſoners themſelves, in whoſe favour the ſettlement had been made, were always with the teſtator, and conſtantly around his bed-ſide. He had never ſhown the leaſt intention or inclination to recal that deed; and the influence of the eldeſt ſon, the only perſon whoſe intereſt it was to have it altered, they had no reaſon to dread, as he lived at a diſtance, and ſeldom or never approached his dying father.

Beſides all theſe circumſtances, there is ſtill another, which muſt render this accuſation moſt improbable, and that is, the youth of one of the priſoners, William Keith. This young man was not eighteen years of age at the time of his father's death, an age when ſuch cruelty of diſpoſition, as could prompt to the murder of a father, has hardly

hardly ever been known to take poſſeſſion of the human mind. If ſuch had been the cruelty of his diſpoſition, we ſhould certainly expect to diſcover ſome marks of it even in the former part of his life. We ſhould expect that one, who, in ſuch early youth, had ſhewn ſuch unuſual wickedneſs of diſpoſition, as at once to commit a crime in which all other crimes ſeem to be comprehended, would be found alſo in his after-life abandoned to all kinds of wickedneſs. On the contrary, throughout all his paſt life, either in that preceding the death of his father, or ſince that time, we cannot diſcover any the leaſt ſymptom or appearance of cruelty or inhumanity of diſpoſition. He lived in his father's family till the time of his death; and ſo far from having diſcovered there any wicked or undutiful diſpoſition, he was, of all his other children, the moſt beloved and favoured by his father. Since the death of his father, he has employed himſelf in agriculture. He has now a wife and a little family, to whom he has ever ſhown himſelf a tender huſband, and an affectionate father. He has lived a life inoffenſive to his neighbours, and irreproachable in every part of his conduct.

If then we perceive in his character no wickedneſs of diſpoſition, what can we poſſibly ſuppoſe to have excited him to ſo atrocious and ſo unnatural a crime? Can we believe that intereſt could prompt him? Motives of intereſt, however ſtrongly they may operate upon the minds of men in more advanced life, have never yet been known to take ſuch deep root in early youth. Has he ever in the whole courſe of his life diſcovered any avarice of diſpoſition? Has he ever been ſo profuſe in his

expence

expence, as to become neceſſitous? No. Neither of theſe have been even alledged. Was the ſum, the poſſeſſion of which he was to attain by his father's death, very conſiderable or tempting? We have on the contrary ſhown, that the ſituation of his circumſtances was ſuch, that he muſt rather have wiſhed the continuance of his father's life. What cauſe then can poſſibly be pointed out, which could inſtigate this young man wickedly to murder that father who loved him ſo tenderly?

If thus, after examining on every ſide, we have not been able to diſcover any motive whatever, which could poſſibly have inſtigated this boy of eighteen to commit this crime, we ſurely muſt admit it to be a very ſtrong preſumption of his innocence. And when, together with this circumſtance, we ſhall conſider the great uncertainty of a crime's having been at all committed, and the doubtful and ambiguous nature of all theſe circumſtances, from which the Proſecutor attempts to infer his guilt, it is hoped that little doubt will remain concerning his innocence.

If, however, we ſhall be ſatisfied of his innocence, it neceſſarily follows, that we muſt alſo be convinced of the innocence of the other priſoner his mother. The two priſoners were the only perſons in the room with the deceaſed, when he expired; and if he was murdered, both of them muſt have been guilty of that bloody deed.

Theſe general reflections have been made on the nature of this caſe, chiefly, in order to aſſiſt the Jury, in attending to the evidence which is now to be adduced. The priſoners have already admitted the Libel to be relevant; and they have only now to beg, that the Honourable Judge will be

pleaſed

pleaſed to allow them an exculpatory proof, in the uſual form.

The ADVOCATE-DEPUTE not objecting,

The Lord KAIMS, one of the Lords Commiſſioners of Juſticiary, having conſidered the Criminal Letters, raiſed and purſued at the inſtance of James Montgomery Eſquire, his Majeſty's Advocate, for his Majeſty's intereſt, againſt Helen Watt, widow of the deceaſed Alexander Keith of Northfield, and William Keith eldeſt lawful ſon procreated betwixt the ſaid deceaſed Alexander Keith and the ſaid Helen Watt, priſoners, with the foregoing debate; Find the Libel relevant to infer the pains of law; but allows the priſoners to prove all facts and circumſtances that may tend to exculpate them, or alleviate their guilt; and remit the priſoners, with the Libel as found relevant, to the knowledge of an aſſize.

(Signed) HENRY HOME.

Thereafter the Lord Kaims proceeded to make choice of the following perſons to paſs upon the aſſize:

Arthur Maitland of Pitrichie,
Alexander Farquharſon of Inveray,
Francis Farquharſon of Finzean,
William Forbes of Skellater,
John Forbes of Belabeg,
John Forbes of Inverernan,
Lewis Innes of Balnacraig,
William Wemyſs of Craighall,

Kenneth

Kenneth MacKenzie Merchant in Aberdeen,
Alexander Mitchell Writer there,
Ninian Johnſton Merchant there,
Joſeph Forbes Wright there,
Robert Petrie of Auchmadies,
Patrick Souper of Achlounnies,
John Fordyce of Ardoe.

The above aſſize being all lawfully ſworn, and no objection in the contrary, the Advocate-depute adduced the following witneſſes:

Elspeth Bruce, ſpouſe to William Cruikſhanks in Gardenſton, aged 39 years, purged of malice and partial counſel, ſworn and interrogate, Deponed, That ſhe was ſervant to the deceaſed Alexander Keith of Northfield, and was in the houſe at the time of his death, which was nine years paſt at Martinmas laſt. Depones, That he was indiſpoſed ſome time before his death; but whether his indiſpoſition was the cauſe of his death, ſhe cannot ſay. Depones, That the ſaid Northfield and Helen Watt his ſpouſe, did not live comfortably together, but were often ſquabbling, though ſhe cannot ſay who gave occaſion to their ſquabbling: That at one time ſhe came butt the houſe in a paſſion, and ſaid, God that he had broke his neck when he broke his horſe's neck, and then ſhe would not have got ſo much anger by him, meaning thereby her husband, as ſhe underſtood. Depones, That Henrietta Keith, who had been at ſupper with her father Northfield, came into the kitchen, and told the deponent, that her father was

ſitting

ſitting ben yonder; and that he had taken two ſpoonfuls of broſe to his ſupper: That in a little time after, the cry came ben that he was dead; and ſhe is certain that this was within half an hour of what was told her as aforeſaid by Henrietta: That ſhe run into her maſter's room, found him in appearance dead in the bed, his wife and his ſon William in the room, and none elſe, if it was not ſome of the younger children: That the deponent went to advertiſe John Keith, Northfield's brother, of this accident, who lived about the diſtance of a long rig; and when ſhe returned, ſhe found her maſter ſtriked upon a deal, at a diſtance from the bed. Depones, That when George Keith, young Northfield, came next morning and took a look of his father's corpſe, he expreſſed ſome ſuſpicion of foul play, becauſe of a blae mark round his neck: That upon this the deponent went into the room, and ſaw a blae mark round the defunct's neck, about the breadth of two fingers, and a blae ſpot upon his breaſt. And being interrogate, What ſhe thought of that appearance? Declined being particular, but at laſt ſaid, That ſhe thought that the ſuddenneſs of his death, and the ſaid marks were ſtrange circumſtances. Depones, That Northfield died on Monday night at 10 o'clock; and that, to the beſt of the deponent's remembrance, the burial was appointed to be on Thurſday following, and was ſo accordingly. Being interrogate on the part of the pannels, depones, That Alexander and Helen were the two children that were in the room when Northfield died: That Alexander was more than ſix or ſeven years old, and Helen was

younger; and that ſhe cannot be more particular about their ages. Depones, That the kitchen was on the ſame floor with the room in which Northfield died, and divided from it by a timber-partition, but that when the room door was ſhut, ſhe never heard what paſſed in the room; and that, in particular, ſhe heard no noiſe in the room that night that Northfield died. *Cauſa ſcientiæ patet.* And this is truth as ſhe ſhall anſwer to God. And depones, She cannot write. Being further interrogate, depones, That Northfield at the time of his death might be about three-ſcore; and that Helen Watt his wife was daughter of a fiſherman at Crivie: That ſhe had heard Northfield ſpeak of his age. Depones, That William Keith the pannel was about 18 or 19 years of age, though ſhe is not certain about his age. *Cauſa ſcientiæ patet.* And this is alſo truth as ſhe ſhall anſwer to God.

(*Sic ſubſcribitur*) HENRY HOME.

WILLIAM TAYLOR in Darfaſh, married, and aged 40 years, purged of malice and partial counſel, ſworn and interrogate, depones, That he was ſervant to Alexander Keith of Northfield at the time of his death, which was about 10 years ago: That the deponent that night his maſter died, after he was done with his work, went into his maſter's room to ask how he was, and got from his maſter for an anſwer, That he thought himſelf better; and his reaſon for asking about his maſter's health was, that he was tender for ſome time before. Depones, That when he came in to ſee his maſter as aforeſaid, his maſter was ſitting in the chair with one

one leg above the other, and a pinch of ſnuff between his finger and thumb. Depones, That about a fortnight before his maſter's death, he heard Helen Watt the pannel ſay, that if God would not take her husband, might the devil take him; and that her reaſon for ſaying ſo of her husband, as the deponent conjectured, was, that her husband liked a dram too well, and was ſpending too much. Depones, That ſometime before Northfield's death, Mr Wilſon the miniſter wrote a teſtament for him; and that Mr Garden of Troup, and the deponent were ſubſcribing witneſſes to the ſaid teſtament. Depones, That he ſaw his maſter's corpſe after it was ſtriked; and, lifting off the cloth off his face, ſaw a blue mark about his neck, about the breadth of three fingers; but whether it went round the back part of his neck, he cannot ſay, becauſe he did not ſee that part. Depones, That he asked at Helen Watt the pannel, in the preſence of John Keith, the defunct's brother, and others, What was the meaning of that mark? and that ſhe anſwered, That it was occaſioned by a ſtring tied round his neck for holding on a plaiſter. Depones, That the night after Northfield's death, George Keith his eldeſt ſon, ſitting by his father's corpſe, Helen Watt asked her ſon William, What his brother would get for his ſupper? upon which William anſwered, That a guidfull of the dog's meat was good enough for him: That he had no buſineſs there; and that, curſing his brother, ſaid, That little hindered him to take a gun to ſhoot him. Depones, That Northfield died on Monday night at nine o'clock, and was buried ſoon thereafter, though

though the deponent cannot remember the preciſe day; but that the day of the interment, the corpſe was taken out of the houſe, without advertiſing the ſaid George Keith or Mr Wilſon the miniſter, who were in the houſe at the time; and that the corpſe was carried about a mile and an half, towards the place of interment, before theſe two gentlemen knew of it: That George Keith complained that the burial was too early, before he had time to prepare matters for the burial. Depones, That ſometime thereafter he heard William Keith the pannel ſay to his mother the other pannel, That if it had not been her four quarters his father might have been living: That ſhe never would get juſtice till ſhe was hung up beſide William Waſte; and that he could be content to pull down her feet. Being interrogate on the behalf of the pannels, depones, That no perſon, ſo far as he knows, was hindered from looking to the corpſe. Depones, That the kitchen was on the ſame floor with the room in which Northfield died, and was divided from it by a timber-partition. Depones, That the preſent Northfield and Mr Wilſon the miniſter were in an upper room when the corpſe was taken out of the houſe for the burial, without acquainting them: That when they got notice that the corpſe was removed, they followed; but it was a conſiderable time before they overtook the company: That Northfield was at that time in complete mourning: That the corpſe was removed in the forenoon, and the place of interment was at the diſtance of three or four miles.

*Cauſa*

*Cauſa ſcientiæ patet.* And this is truth as he ſhall anſwer to God. (*Sic ſubſcribitur*) *William Taylor.*
HENRY HOME.

JOHN STRACHAN wright in Gardenſtoun, married, aged 42 years, purged of malice and partial counſel, ſworn and interrogate, depones, That he made Northfield's coffin, and put the corpſe into the coffin; after which the preſent Northfield turned down the grave-clothes, and ſhowed the deponent a mark round the fore part of the defunct's neck; but whether it went round he cannot ſay, becauſe he did not ſee the back part of his neck: That he alſo ſaw a mark upon the defunct's breaſt, that reached down towards the ſlot of his breaſt: That the marks were of a blackiſh blue, like the neck of a fowl newly ſtrangled. *Cauſa ſcientiæ patet.* And this is truth as he ſhall anſwer to God. (*Sic ſubſcribitur*) *John Strachan.* HENRY HOME.

JAMES KING in Protſtoun, married man, aged 50 years and upwards, purged of malice and partial counſel, ſworn and interrogate, depones, That he helped John Strachan the preceeding witneſs to make the coffin for the late Northfield, and to put him into it: That, at the preſent Northfield's deſire, he looked at the body, and ſaw a black red mark round the neck, ſuch as the deponent never ſaw on any corpſe before that time. *Cauſa ſcientiæ patet.* And this is truth as he ſhall anſwer to God. (*Sic ſubſcribitur*) *James King.*
HENRY HOME.

ALEX.

ALEXANDER HEPBURN in Cuſhnie, married, aged 28 years, ſworn, purged of malice and partial counſel, and interrogate, depones, That, about the time of the coffining, he inſpected the body of the late Northfield, at the deſire of the preſent Northfield, who threw off or laid aſide the dead cloaths from the upper part of the body: That the firſt thing the deponent ſaw was ſome blue ſpots upon the breaſt; the next thing he ſaw, was a blue girth that went round his neck, like bruiſed blood: That on the back part of the neck he ſaw a mark like what is occaſioned by a knot drawn ſtrait. Depones, That Helen Watt the pannel, who was in the room at the time, ſeemed unwilling to have the corpſe inſpected, ſaying, That there was nothing unſeemly to be ſeen there. Depones, That Helen Watt helped to put the body of her husband into the cheſt; and as the coffin was rather ſcrimp as to length, preſſed down the head within the coffin. And being interrogate for the pannels, depones, That when the body was inſpected, there was in the room, beſides Helen Watt and young Northfield, John Strachan and James King, the former witneſſes; and he does not remember, whether or what other perſons were in the room. *Cauſa ſcientiæ patet.* And this is truth as he ſhall anſwer to God. (*Sic ſubſcribitur*)

*Alexander Hepburn.* HENRY HOME.

JAMES MANSON ſhoemaker in Gardenſtoun, married man, aged 40 years or thereby, ſworn, purged of malice and partial counſel, and interrogate, depones, That the day of the late Northfield's

field's death about the evening, he ſhaved him; that he was ſitting in his night-gown, not well. *Cauſa ſcientiæ patet.* And this is truth as he ſhall anſwer to God. And further depones, That he ſaw nothing diſcoloured about Northfield's neck; but that, whether the neck of his ſhirt was looſe or not, he does not remember; and this is alſo truth. (*Sic ſubſcribitur*) *James Manſon.* HENRY HOME.

GEORGE GELLY in Greenley, married man, aged 40 years and upwards, ſworn, purged of malice and partial counſel, and interrogate, depones, That he ſaw the late Northfield, a few hours before his death, ſitting in his chair, and not very well: That they converſed ſometime together; and that Northfield laughed ſeveral times in the courſe of the converſation: That this converſation happened before it was dark. *Cauſa ſcientiæ patet.* And this is truth as he ſhall anſwer to God. (*Sic ſubſcribitur*) *George Gelly.* HENRY HOME.

JAMES DUNCAN in Whitefield, married man, aged about 40 years, ſworn, purged of malice and partial counſel, and interrogate, depones, That in the harveſt 1761 years, Helen Watt came to her ſon William, and offered herſelf to him as a ſhearer: That he rejected her ſervice; and, after ſhe was gone, ſaid to the deponent and his other ſhearers, among whom Margaret Smith was one, That his mother Helen Watt would not get juſtice till ſhe was hanged. *Cauſa ſcientiæ patet.* And this is truth as he ſhall anſwer to God. (*Sic ſubſcribitur*) *James Duncan.* HENRY HOME.

Dr

Dr ALEXANKER IRVINE Phyſician in Banff, married, aged 53, purged of malice and partial counſel, ſworn, and interrogate, depones, That he never ſaw, in the courſe of his practice, a bluiſh mark or ring round the neck of a dead body, that he could ſuſpect was occaſioned by any ſort of diſeaſe, without external violence. Depones, That he can ſcarce ſay that ſuch a mark could be occaſioned by any diſeaſe. *Cauſa ſcientiæ patet.* And this is truth as he ſhall anſwer to God. (*Sic ſubſcribitur*) *Alexander Irvine.* HENRY HOME.

JAMES GORDON of Techmury, married, aged 70 and upwards, purged of malice and partial counſel, ſworn and interrogate, depones, That young Northfield, ſoon after his father's death, wrote a letter to the deponent, his uncle by the mother, ſignifying a ſtrong ſuſpicion, that his father was ſtrangled by his wife and his ſon William, and deſiring the deponent's advice how he ſhould behave: That the deponent wrote an anſwer, adviſing him not to inſiſt in any criminal proſecution, unleſs he had clear evidence. Being interrogate, Whether he was invited to the burial of his brother-in-law Northfield? depones, He was not; and adds, That he had never kept much company with Northfield from the time of his laſt marriage, becauſe he thought it a moſt diſgraceful one: That, upon occaſion of his niece's marriage, daughter to Northfield, he went to Northfield's houſe to witneſs the ceremony; but inſiſted that Helen Watt, Northfield's wife, ſhould not be admitted. *Cauſa*

*ſcientiae*

*ſcientiae patet.* And this is truth as he ſhall anſwer to God. (*Sic ſubſcribitur*) *James Gordon.*

HENRY HOME.

Mr JAMES WILSON, miniſter of the goſpel at Gamery, married, aged 70 years, purged of malice and partial counſel, ſworn, and interrogate, depones, That he was acquainted with the late Keith of Northfield, ſaw him frequently, and particularly the afternoon on which he died: That he had been valetudinary, but ſeemed to be paſt danger, and in the way of recovery: That, ſaid day, he talked with the deponent in his uſual jocoſe manner. Depones, That he wrote a teſtament for the defunct ſome days before his death, the particulars of which he does not remember; but, in general, that it contained a ſettlement in favour of Helen Watt and her children, as much as his eſtate could allow, as the deponent then thought. Depones, That being invited to the burial of the deceaſed Northfield, he was taken up to a room privately by the preſent Northfield, who intimated to him his ſuſpicions that his father had not got juſtice in his death, and deſiring him to look to the dead body, and give him his advice how he ſhould behave. This the deponent declined, excuſing himſelf by his ignorance in theſe matters; but adviſing him to conſult phyſicians. Upon this he was told by young Northfield, That he had wrote Mr Finlay ſurgeon in Frazerſburgh, and had got for an anſwer, that he could do nothing ſingle, and adviſing him to take the aſſiſtance of the two phyſicians at Banff. Upon this young Northfield, go-

ing to the window, obſerved that the corpſe was gone: At which both of them were much ſurpriſed; but followed after as faſt as they could, young Northfield on foot, and the deponent on horſeback. Being interrogate on the part of the pannels, depones, That he thinks Northfield, when he died, might be about threeſcore. Depones, That Northfield's burial was on the Thurſday after his death. *Cauſa ſcientiae patet.* And this is truth as he ſhall anſwer to God. (*Sic ſubſcribitur*) *James Wilſon.*

HENRY HOME.

ALEXANDER WIGHT, for the pannels, obſerved, That one of the Jury, *viz.* William Forbes of Skellater, had gone out of the Court, and was ſeen on the ſtreet going in towards the New Inn; and therefore inſiſted, that the trial could not proceed; and that the pannels ought to be diſmiſſed from the bar, never to be brought again to trial for the crimes for which they now ſtand accuſed.

The ADVOCATE-DEPUTE anſwered, That, when Mr Forbes of Skellater went out of Court, no evidence was leading, and he returned before any witneſs was begun to be examined: And therefore the objection is of no avail, as the purpoſe of the law, in requiring the cloſe attendance of Jurymen, is, that they may ſee the witneſſes examined, and the manner in which they deliver their evidence, as well as know the import of that evidence. It will not be alledged, That Mr Forbes was either tampered with, or any application whatever made to him. His going out was entirely to eaſe the neceſſities

neceſſities of nature, and he returned immediately when he had done ſo.

WIGHT replied, That the Advocate-depute had miſtaken the reaſon of the law, in ſuppoſing, that it was only on account that the evidence might be led in preſence of the whole aſſize, that a Juryman going out of Court, after the pannel is remitted to an inqueſt, is fatal to the trial; for that the chief reaſon was a jealouſy in the law, that Jurymen may be tampered with when out of Court, or liſten to circumſtances told them without doors: And that he apprehended a circumſtance of this kind muſt not only be fatal to the preſent inſtance, but muſt have the effect to cleanſe the pannels altogether; but that if the Court ſhould be of a different opinion, he was willing the trial ſhould go on, RESERVING to the pannels liberty to move an arreſt of judgment, on account of Mr Forbes's going out, in caſe a verdict ſhall be given, finding them guilty of the crimes laid to their charge.

The Lord KAIMS having conſidered the foregoing debate, in reſpect the pannels procurators do not object to the trial proceeding, ORDAINS the ſame to proceed; reſerving to the pannels all objections, as accords.

(*Sic ſubſcribitur*) HENRY HOME.

JOHN MAIR in Newton of Northfield, married man, aged 58 years or thereby, ſworn, purged of malice and partial counſel, and interrogate, depones, That

That there was a difference, about naming a day for the late Northfield's burial, between his eldeſt ſon George, and his wife Helen: That the latter inſiſted it ſhould be on Thurſday, which accordingly was done; but that the former inſiſted that it ſhould be put off till Saturday: That, before the burial, he heard the ſaid George require Elſpet Bruce to acquaint him with the circumſtances of his father's death; to which ſhe made no anſwer, but turned about her back, and wept. Upon which George ſaid, That as ſhe would not tell then, ſhe behoved to tell afterwards. *Cauſa ſcientiae patet.* And this is truth as he ſhall anſwer to God. And depones, He cannot write.

(Signed) HENRY HOME.

JAMES BOATH taylor in Banff, married man, aged 50 and upwards, ſworn, purged of malice and partial counſel, and interrogated, depones, That ſeveral years after old Northfield's death, the two pannels quarrelled in the deponent's houſe, provoking one another by abuſive language, the particulars of which the deponent does not remember, further than that the mother ſaid to the ſon, "Sir, or William, I know as much of you as "would get you hanged:" That William made an anſwer, but what it was the deponent cannot remember. *Cauſa ſcientiae patet.* And this is truth as he ſhall anſwer to God.

(*Sic ſubſcribitur*) *James Boath.* HENRY HOME.

JANET WATT in Crivie, unmarried, aged about 23 years, ſworn, purged of malice and partial

tial counſel, and interrogate, depones, That after a quarrel between William Keith and his mother Helen Watt, about milking the cows, he came home to his kitchen, where the deponent his ſervant was, and alſo his wife, and ſaid to them, That his mother was a liar, a thief, and a murderer. *Cauſa ſcientiae patet.* And this is truth as ſhe ſhall anſwer to God. And depones, She cannot write.

(*Sic ſubſcribitur*) HENRY HOME.

ISABEL ROBERTSON in Drochaſh, unmarried, aged about 21 years, ſworn, purged of malice and partial counſel, and interrogate, depones, That, being ſervant to Helen Watt about five or ſix years ago, ſhe had occaſion to know that William Keith, who lived in the ſame houſe, and lay in the ſame bed in which his father died, was frighted with ghoſts and apparitions: That he got a lad to lye in the room with him for a night or two; after which he went to another bed. Depones, That ſhe heard Elizabeth Keith, one of old Northfield's daughters ſay, That ſhe wiſhed that the ſecret of her father's death might come out upon her mother Helen Watt and her brother William. *Cauſa ſcientiae patet.* And this is truth as ſhe ſhall anſwer to God. And depones, She cannot write.

(*Sic ſubſcribitur*) HENRY HOME.

JAMES IRVINE, ſervant to Alexander Mellis merchant in Banff, unmarried, aged 30 years or thereby, ſworn, purged of malice and partial counſel, and interrogate, depones, That, ſix or ſeven years ago, he was ſervant to William Keith pannel, who

who complained that he could not ſleep in his bed, becauſe he was troubled: That he did not tell the deponent what he was troubled about. Depones, That, at William Keith's deſire, he ſat up in the room with him a whole night: That William Keith, after that, changed his bed. And being interrogate on behalf of the pannels, depones, That it was ſaid among themſelves, but by whom he does not know, That William was afraid of his brother George; but that the deponent did not believe it, nor does he think it was believed by others. Depones, That William had a gun, and once procured a powder-horn with powder. Depones, That he never heard it ſaid that William was afraid of his father's ghoſt. *Cauſa ſcientiae patet.* And this is truth as he ſhall anſwer to God. (*Sic ſubſcribitur*) *James Irvine.* HENRY HOME.

GEORGE KEITH of Northfield, being called on the part of the proſecutor, it was objected on the part of the pannels, That he not only was the private informer and ſpring of the preſent proſecution, but likeways acted as an agent, by attending the precognition, and directing the queſtions to be put to the perſons brought before the Sheriff, in order to be precognoſced. And this objection is offered to be inſtantly proved by the Sheriff-clerk of Banff, and his clerk.—The LORD KAIMS ſuſtains the objection as relevant to caſt the witneſs, and admits the ſame to the pannels probation.

(*Sic ſubſcribitur*) HENRY HOME.

JAMES

JAMES DUFF Sheriff-clerk of Banff, and James Porter his clerk, being ſeverally called, ſolemnly ſworn, and interrogate, depone, That George Keith, preſent Northfield, aſſiſted in the precognition againſt the pannels, and ſuggeſted many queſtions to the Sheriff-ſubſtitute to be put to the witneſſes. And this is truth as they ſhall anſwer to God. *Cauſa ſcientiae*, they were both preſent when George Keith did ſo. (*Sic ſubſcribitur*) *James Duff. James Porter.* HENRY HOME.

The Lord KAIMS having conſidered the foregoing depoſitions, FINDS the objection proved; and that the ſaid George Keith cannot be received as a witneſs. (*Sic ſubſcribitur*) HENRY HOME.

JAMES DUFF Sheriff-clerk of Banff, widower, aged 34 years or thereby, ſworn, purged of malice and partial counſel, and interrogate, depones, That the two declarations of William Keith and Helen Watt, the firſt dated the 7th, the ſecond the 8th days of July laſt, ſeverally ſigned by the ſaid William Keith, and by the ſaid Helen Watt by her initials, and both by Mr Alexander Dirom Sheriff-ſubſtitute of Banff-ſhire, were emitted by them before the ſaid Mr Alexander Dirom, voluntarily and freely, without any compulſion, and were taken down fairly as emitted by them; and being read over to them before ſigning, they were acknowledged by them to be juſtly taken down: That both the ſaid declarations are of the handwriting of James Porter, the deponent's clerk. *Cauſa ſcientiae patet.* And this is truth as he ſhall anſwer

anſwer to God. And both the ſaid declarations are now ſubſcribed by the deponent, and the Lord Examinator.

(Signed) *James Duff.*
HENRY HOME.

JAMES PORTER, ſervant to James Duff Sheriff-clerk of Banff, unmarried, aged 20 years and upwards, ſworn, purged of malice and partial counſel, and interrogate, depones *conformis praecedenti in omnibus. Cauſa ſcientiae patet.* And this is truth as he ſhall anſwer to God.

(Signed) *James Porter.* HENRY HOME.

Which two declarations being read over in open Court, the tenor thereof follows :

At Banff, the ſeventh day of July, one thouſand ſeven hundred and ſixty-ſix years, in preſence of Mr Alexander Dirom Sheriff-ſubſtitute of Banffſhire, compeared William Keith, ſon to the deceaſed Alexander Keith of Northfield, who being examined, declares, That the evening that his father died, the declarant and his mother Helen Watt, Alexander Keith, Henrietta Keith, Elizabeth Keith, and Helen Keith, were all in the room with the deceaſed at ſupper-time, and the deceaſed took a very little ſupper, either of aleberry or kail-broſe. Declares, That, ſoon after that, the deceaſed deſired to be put to bed, having, ſoon after eating his ſupper, purged, and imagined he had paſſed the very food he had newly eaten : That the bed was made, a pair of blankets was warmed

warmed and put into it, and the declarant helped the deceaſed to bed: That, as ſoon as the ſervant-maid had taken away the diſhes from ſupper, Helen Watt threw off her cloaths, and went to bed with Alexander Keith and Helen Keith, who were then young, and lying in a bed at the end of the deceaſed's bed; and the deponent threw off his cloaths to go to bed with his father, who had deſired him to lye down at his back to ſee if he could gather any heat: That, after he had thrown off all his cloaths but his breeches, he put out the candle; and, in throwing off his breeches at the bed-ſide, he had occaſion to lean upon the bed-ſide; and, not hearing his father's breath, he called out haſtily in ſurpriſe to his mother, to riſe and light the candle, for his father was either dead or dying; and he immediately went to the door, and called the ſervant-maid, and his ſiſters Henrietta and Elizabeth, to come to his father's room: That the ſervant-maid and Henrietta came immediately; but Elizabeth Keith being in bed, it was ſome time before ſhe came: That, upon their coming in, and getting the candle lighted, the declarant looked at his father's face, and obſerved one eye ſhut, and another open; his lips quivered a little, and he could juſt be obſerved to breathe: That the declarant called to Elſpet Bruce to go for William Spence, who was drying corn at the kiln; which ſhe did; and by the time ſhe and William Spence came in, the deceaſed's breathing could not be obſerved; and the eye that was formerly open, was partly ſhut: That Elſpet Bruce, after returning with William Spence, was immediately ſent

for John Keith, the deceaſed's brother, who lived at but a very ſmall diſtance; and Anne Keith, the deceaſed's ſiſter, was alſo ſent for, who lived about three rig-lengths diſtant; and ſoon after ſhe came, the deceaſed's body was taken out of the bed, and ſtriked in the ſame room; but the declarant did not look at the body that night. Declares, That there had been a bliſtering plaiſter applied to the deceaſed's back; and after it was taken away, kail-blades were applied to the place where the plaiſter had been; and in order to keep theſe blades in the proper place, they were tied on with the deceaſed's own garters, which went below the arm-pits, and round the farther ſide of the neck; and theſe kail-blades and garters continued in that ſituation, after the deceaſed's death, until his grave-linen was made, and put upon him. Declares, That he was preſent when the grave-linen was put upon the body; at which time, ſome of the women who were there, looſed the above garters, and took them away; and the declarant then obſerved a blue ſpot upon the left breaſt, about the breadth of three fingers, but did not obſerve anything about the neck, further than that there was a great ſwelling over his whole body. Declares, That from the time the deceaſed was put to bed, the evening of his death, no perſon went near him, until the declarant called to light a candle as above; nor did the deceaſed make the leaſt noiſe after he was put to bed. All which he declares to be truth. And this declaration, wrote upon this and the two preceding pages, by James Porter, ſervant to James Duff Sheriff-clerk of Banff, is ſubſcribed by the declarant,

declarant, in preſence of the ſaid Sheriff-ſubſtitute, and the ſaid James Duff, and James Porter, and James Morriſon town-officer in Banff.

(*Sic ſubſcribitur*) *William Keith.* ALEX^R. DIROM.

*James Duff* witneſs, *James Porter* witneſs,
*James Morriſon* witneſs.

At Banff, the eighth day of July, one thouſand ſeven hundred and ſixty-ſix years, in preſence of Mr Alexander Dirom Sheriff-ſubſtitute of Banffſhire, compeared Helen Watt, relict of the deceaſed Alexander Keith of Northfield, preſent priſoner within the tolbooth of Banff; who being examined, declares, That the evening that the ſaid Alexander Keith died, he took a little ſupper with the declarant and her children; but that ſhe does not remember what they had for ſupper that night, but that the declarant and the whole of her children were in the deceaſed's room at ſupper: That, after ſupper, the deceaſed deſired his children to go to bed, for that he wanted to be quiet; but as he had ſaid to the declarant that he would have died that night, ſhe inſiſted, that his ſon William Keith ſhould ſtay with him in the room: That her ſon Alexander Keith, and her daughter Helen, the one being about ten years old, and the other about ſeven, were put to bed in the ſame room with the deceaſed: That her two daughters, Henrietta and Elizabeth, the one being about 15 years old, and the other about 13, went out of the room to the kitchen; and the declarant's ſon William, then about 18 years of age, remained in the deceaſed's room with her: That, before the other

other children went out of the room, they and the declarant helped the deceaſed to his bed; and a blanket was warmed, and put about him in bed: That after he was in bed, William Keith put out the candle: That William Keith intended to have lain in bed with the deceaſed that night; and ſoon after the candle was put out, William Keith called to the declarant to light it again, for that he had ſpoke twice to his father, and that he had made him no anſwer; and while the declarant was lighting the candle, William Keith called upon the people that were in the kitchen, to come into the room; and accordingly Elſpet Bruce the ſervant-maid, and Henrietta and Elizabeth Keith, came into the room; and after the candle was lighted, Henrietta Keith ſaid ſhe ſaw her father's lips moving; and the declarant then deſired them to let him alone for a little; and the declarant did not look at the deceaſed at that time: That Elſpet Bruce was ſent for the deceaſed's brother, John Keith, who then lived about two rig-lengths diſtant: That John Keith came in leſs than half an hour, and then the declarant and the ſaid John Keith looked at the deceaſed's body; and the declarant, nor any of her children, did not look at the body ſooner, except when Henrietta looked at his face as above mentioned, as they expected he would come alive again. Declares, That when John Keith came, he looked at the deceaſed's body, and ſaid he did not think but he was dead: That the declarant looked then in over the bed, but did not touch the body; nor can ſhe tell how or in what way he was taken out of the bed, but

he

he was taken out ſoon after John Keith came, and ſtriked in the room; but the declarant did not look at the body that night, but next day ſhe aſſiſted to put on a ſhirt on the body, and then ſhe obſerved ſomething blue about the back part of the neck, but cannot tell whether that blueneſs was round his neck or not. Declares, That ſhe heard a plaiſter had been applied to the deceaſed's back or his neck; but when ſhe aſſiſted to put on the ſhirt on the dead body, as above, ſhe cannot tell whether the plaiſter was on the body or not, or whether there was any mark of a plaiſter upon the body or not. Declares, That ſhe can tell nothing more of her huſband's death, than is above mentioned. All which ſhe declares to be truth, and declares that ſhe cannot write, but by initials: And this declaration, wrote upon this and the two preceeding pages, by James Porter, ſervant to James Duff ſheriff-clerk of Banff, and a marginal note upon the firſt page, is ſigned by the ſaid Helen Watt's initials, in preſence of the ſaid ſheriff-ſubſtitute, and the ſaid James Duff, James Porter, and James Morriſon town-officer in Banff. And the ſaid Helen Watt declares, She cannot even ſign initials without her hand being led; and which accordingly has been done by the ſaid James Porter. (Signed) *H. W.*

ALEXANDER DIROM.

*James Duff* witneſs, *James Porter* witneſs, *James Morriſon* witneſs.

The Advocate-depute declared, He had reſted his proof upon the evidence of the foregoing witneſſes.

The

The Procurators for the pannels, proceeded to adduce the following witneſſes for proving in their exculpation.

JOHN KEITH in Glenquithle, married, aged 55 years or thereby, ſworn, purged of malice and partial counſel, and interrogate, depones, That his brother old Northfield was three-ſcore and three years when he died: That he had been long in a valetudinary way, and thought once that he was a-dying; but that near the time of his death, he thought he might recover: That Dr Chap attended him as a phyſician, and ſuppoſed that he gave him medicines. Depones, That his ſiſter Anne Keith died a year or two after her brother Northfield died. *Cauſa ſcientiæ patet.* And this is truth as he ſhall anſwer to God. (*Sic ſubſcribitur*) *John Keith.*

HENRY HOME.

JOHN CHAP Surgeon in old Deer pariſh, married man, aged about 75 years, ſworn, purged of partial counſel, and interrogate, depones, That he attended the late Northfield as a phyſician till about eight days before his death, when he found him ſo ill that he thought him a-dying; and he deſired his wife not to ſend for him, the deponent, again unleſs he grew better; That he left two bliſtering plaiſters to put upon his back. Depones upon the interrogatory of the proſecutor, That the diſeaſe, under which Northfield laboured, was an aſthma, attended with a high fever. *Cauſa ſcientiæ patet.*

*patet.* And this is truth as he ſhall anſwer to God. (*Sic ſubſcribitur*) *John Chap* Surgeon.

HENRY HOME.

The Procurators for the Pannels, declared they ended their exculpatory proof.

The Advocate-depute having ſummed up the proof on the part of the proſecutor, and Mr Alexander Wight on the part of the pannels, The Lord KAIMS ordained the aſſize inſtantly to incloſe, in the laigh council-houſe, and to return their verdict, in this place, at ten o'clock to-morrow forenoon; the whole fifteen aſſizers then to attend, each under the pains of law: Continues the diet againſt the pannels, and whole other diets of Court till that time; and ordains the pannels, in the mean time, to be carried back to priſon.

*Curia*

*Curia itineris juſticiarii, S. D. N. Regis, tenta in prætorio burgi de Aberdeen, quinto die Septembris, milleſimo ſeptingenteſimo ſexageſimo ſexto, per Honorabilem virum Henricum Home de Kaims, unum ex Commiſſionariis Juſticiariæ S. D. N. Regis.*

*Curia legitime affirmata.*

*Intran* HELEN WATT, widow of the deceaſed Alexander Keith of Northfield, and WILLIAM KEITH eldeſt lawful ſon procreated betwixt them, Priſoners within the tolbooth of Aberdeen, Pannels, Indicted and accuſed, as in the preceeding ſederunt. The perſons who paſſed upon the aſſize of the ſaid pannels, returned the following verdict: At Aberdeen the fourth day of September, One thouſand ſeven hundred and ſixty ſix years, The above aſſize having incloſed, made choice of Francis Farquharſon of Finzean to be their Chancellor, and of Alexander Mitchell writer in Aberdeen to be their Clerk; and having conſidered the Criminal Letters raiſed and purſued at the inſtance of James Montgomery Eſq; his Majeſty's advocate, for his Majeſty's intereſt, againſt Helen Watt, widow of the deceaſed Alexander Keith of Northfield, and William Keith eldeſt lawful ſon procreated betwixt the ſaid deceaſed Alexander Keith and the ſaid Helen Watt, preſent priſoners in the tolbooth of Aberdeen, Pannels, with the

the interlocutor, on the relevancy, pronounced by Lord Kaims, Lord Commiſſioner of Juſticiary, and the depoſitions of the witneſſes adduced by the proſecutor for proving his libel, and the depoſitions of the witneſſes adduced by the Pannels for their exculpation; they, by a plurality of voices, Find the Pannels guilty; But, in reſpect of the ſaid William Keith's youth, and the preſumed influence the ſaid Helen Watt, his mother, had over him at the time of committing the murder, they do alſo, by a plurality of voices, earneſtly recommend him to the mercy of the Court. In witneſs whereof, their ſaid Chancellor and Clerk have ſubſcribed theſe preſents, in their name and by their appointment, day and place foreſaid. (Signed)

*Francis Farquharſon* Chancellor,
*Alexander Mitchell* Clerk.

The ſaid verdict being read over in open Court, ELPHINSTON, for the Pannels, repreſented, That no judgment could be pronounced on the verdict now returned, in reſpect the ſame was void and null, in ſo far as any thing is found againſt theſe Pannels, the procedure in the courſe of the trial having been irregular and informal; particularly, that during the time of leading the proof, ſeveral of the jury did go out of the Court-houſe, unattended by the macer or any officer of Court; and one of the jury actually went to the open ſtreets, where he was at full freedom to have converſed with any perſon whatever; and this during the leading of the proof, which is directly contrary to the Act of Parliament 1587, cap. 19,

by which the legiſlature ſeems anxiouſly to have meant to prevent any opportunity being given for making any impreſſion on the minds of Jury-men: That further, the Lord Kaims, the only Judge preſent at this trial, did, during the time the proof was leading, leave the Court-room, by which an opportunity was given for any perſon in Court to have converſation with the jury, at that time not under the eye of any Judge. And further, it is with ſubmiſſion apprehended, that although no act of adjournment appears on record, yet the Judge's leaving the Court, was moſt certainly an adjournment, *via facti*, which muſt be held as equal to an adjournment made by order of Court. And, as it is an adjudged point, that the Court cannot be adjourned till the Jury is incloſed after they are once charged with the pannels, the adjournment in the preſent caſe ought to vitiate all the proceedings, and procure an abſolvitor for the pannels.

The Advocate-depute anſwered to the firſt objection, That it was already moved in Court; and after being anſwered and conſidered, the Pannels conſented that the trial ſhould proceed. It would therefore have a very extraordinary appearance, if that objection ſhould be liſtened to, to prevent the verdict from being carried into execution, after the Pannels conſented, that, notwitſtanding ſuch objection, the trial ſhould go on. This would be giving the Pannels a power of abiding by the verdict or not, as was agreeable to them, which would be extremely abſurd, and could not be the meaning of the

the Court, or the belief of the Pannels themſelves, when this objection was formerly ſtirred.

With reſpect to the ſecond objection, That the Judge, during the trial, left the Court, it is anſwered in point of fact, That the Judge was not without the verge of the Court-houſe; he only came down from the bench, and retired to a corner for the benefit of a little freſh air; ſo that there was not the leaſt appearance, either of an adjournment or a diſſolution of the Court; and it might with equal juſtice be pleaded, that as the bench was the proper place for the Judge to ſit upon, ſo the proceedings in a trial would be vitiated by the Judge's moving one ſtep to the one ſide or the other, or coming down to the Clerk's table, which would be a moſt frivolous and ill-grounded objection to any procedure. For theſe reaſons it is hoped that the objections will be diſmiſſed; and that his Lordſhip would proceed to pronounce ſentence.

The Lord KAIMS, having conſidered the foregoing objections and anſwers, repels the objections in reſpect of the anſwers. (*Sic ſubſcribitur.*)

HENRY HOME.

The Lord KAIMS continues pronouncing ſentence againſt the Pannels upon the foregoing verdict till to-morrow at ten o'clock; continues the diet againſt the Pannels till that time: And ordains them in the mean time to be carried back to priſon.

*Curia*

*Curia itineris juſticiarii, S. D. N. Regis, tenta in prætorio burgi de Aberdeen, ſexto die Septembris, milleſimo ſeptingenteſimo ſexageſimo ſexto, per Honorabilem Virum Henricum Home de Kaims, unum ex Commiſſionariis Juſticiariæ S. D. N. Regis.*

*Curia legitime affirmata.*

*Intran* HELEN WATT, Widow of the deceaſed Alexander Keith of Northfield, and WILLIAM KEITH eldeſt lawful ſon procreated betwixt the ſaid deceaſed Alexander Keith and Helen Watt, both preſent Priſoners in the tolbooth of Aberdeen, Pannels, Indicted and accuſed, as in the preceeding ſederunt. The verdict returned againſt the ſaid Pannels, being again read over in open Court, The Lord KAIMS, Lord Commiſſioner of Juſticiary, having conſidered the verdict of aſſize, of date the fourth, and returned the fifth day of September current, againſt Helen Watt, widow of the deceaſed Alexander Keith of Northfield, and William Keith eldeſt lawful ſon procreated betwixt the ſaid deceaſed Alexander Keith and the ſaid Helen Watt, both preſent priſoners in the tolbooth of Aberdeen, Pannels; by which the ſaid Helen Watt and William Keith, are, by a plurality of voices, found guilty of the murder of the ſaid Alexander Keith: But in reſpect of the ſaid William Keith's youth,

youth, and the presumed influence the said Helen Watt had over him at the time of committing the murder, the assize, also by a plurality of voices, earnestly recommended him to the mercy of the Court. Therefore the said Lord KAIMS, Decerned and Adjudged, and hereby Decerns and Adjudges the said Helen Watt and William Keith, to be carried from the bar, back to the tolbooth of Aberdeen, therein to be detained, and to be fed upon bread and water only, in terms of the act of parliament, made in the 25th year of the reign of his late Majesty King George the Second, intituled, An Act for better preventing the horrid crime of murder; the said Helen Watt, until Friday the 17th day of October next to come; and the said William Keith until Friday the 14th day of November next to come: And the said Helen Watt, upon the said 17th day of October next to come, to be taken furth of the said tolbooth, to the common place of execution of the burgh of Aberdeen, and then and there betwixt the hours of two and four o'clock in the afternoon, to be hanged by the neck, by the hands of the common Hangman, upon a gibbet until she be dead, and her body thereafter to be delivered to Dr David Skene Physician in Aberdeen, to be by him dissected and anatomised, in terms of the foresaid Act. And the said William Keith, upon the said 14th day of November next to come, to be taken furth of the said tolbooth, to the common place of execution of the said burgh, and then and there, betwixt the hours of two and four o'clock in the afternoon, to be hanged by the neck, by the hands of the common Hangman,

upon

upon a gibbet, until he be dead, and thereafter his body to be hung in chains upon a gallows, on the Gallowhill of Aberdeen: And Ordained and hereby Ordains, all their moveable Goods and Gear to be Eſcheat and In-brought to his Majeſty's uſe; which is pronounced for doom: Requiring hereby the Magiſtrates of Aberdeen, and keepers of their tolbooth to ſee the foreſaid Sentence put in execution, in all points, as they ſhall be anſwerable at their higheſt peril. (*Sic ſubſcribitur*)

HENRY HOME.

His Majesty, upon some favourable circumstances having been represented to him, was most graciously pleased to grant a pardon to both the Convicts.


BRITISH MUSEUM
17
SEP